I. The Courts Of Appeals Are Divided Over The *Parratt-Hudson* Doctrine's Application To Denials Of Pre-Deprivation Hearings For Tenured Public Employees.

The courts of appeals have acknowledged that there is a fundamental disagreement among the circuits over the breadth of the *Parratt-Hudson* doctrine in general, and its application to denial of pre-deprivation hearings in the employment context in particular.

A. Background

This Court has held that, as a general matter, the Due Process Clause requires state officials to provide notice and an opportunity to be heard prior to depriving individuals of life, liberty or property. See, *e.g.*, *Boddie* v. *Connecticut*, 401 U.S. 371, 379 (1971); *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The rule is not without exceptions, however, and whether a pre-deprivation hearing is required must be determined in different contexts through a balancing of competing individual and state interests. See, *e.g.*, *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982). The dispute in this case is over the relationship between four cases in which this Court has applied that balancing test to determine whether a person was denied due process by state officials' failure to provide a pre-deprivation hearing.

In *Parratt* v. *Taylor*, 451 U.S. 527 (1981), this Court considered whether an inmate had a right to a pre-deprivation hearing before prison officials negligently lost his mail-order hobby kit. Because the loss of the prisoner's property was "a result of a random and unauthorized act by a state employee" and "not a result of some established state procedure," this Court concluded that it was "difficult to conceive of how the State could provide a meaningful hearing before the deprivation takes place." *Id.* at 541. As a result, the Court held that an adequate post-deprivation tort remedy was all the Due Process Clause required. *Ibid.*

In *Hudson* v. *Palmer*, 468 U.S. 517 (1984), this Court extended *Parratt* to a case in which a prison guard intentionally (rather than negligently) deprived a prisoner of his personal property and legal papers without a pre-deprivation hearing. See *id.* at 533. Together, these cases established what is often called the "*Parratt-Hudson*" doctrine.

The Term after *Hudson* was decided, this Court considered whether a State's post-deprivation remedies were sufficient to satisfy the due process rights of workers terminated from public employment. In *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), a tenured security guard at a public school alleged that his right to due process was violated because he was terminated without an adequate pre-termination hearing. The district court dismissed the claim, holding that the State's provision of a post-termination hearing was all the process to which he was entitled. *Id.* at 536. This Court disagreed. The Court first held that the plaintiff had a constitutionally protected property interest in continued employment because state law established that tenured public employees could be dismissed only for good cause. *Id.* at 538-39. The "need for some form of pretermination hearing" to protect that interest, this Court held, "is evident from a balancing of the competing interests at stake." *Id.* at 542. Applying the balancing test of *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), the Court concluded that the employee had a substantial interest in retaining his employment, that providing a pre-termination hearing "is recurringly of obvious value in reaching an accurate decision," and that the "governmental interest in immediate termination does not outweigh these interests." 470 U.S. at 543-44. In contrast to the unusual circumstances in *Parratt* and *Hudson* in which a pre-deprivation hearing was not feasible, the Court held that, in the employment context, it was entirely feasible to provide a pre-termination hearing because "affording the employee an opportunity to respond prior to termination would impose neither a significant

administrative burden nor intolerable delays." *Id.* at 544. Accordingly, the Court concluded that "some form of pretermination hearing" was required before a tenured state employee may be terminated. *Id.* at 542.

Five years later, in *Zinermon* v. *Burch*, 494 U.S. 113, 116 (1990), this Court granted certiorari to resolve a circuit conflict "over the proper scope of the *Parratt* rule." The plaintiff in *Zinermon* alleged that his due process rights were violated when he was confined to a state mental institution for five months as a "voluntary" patient, even though he was manifestly incompetent to provide informed consent at the time of his admission. Because he was not competent to consent to institutionalization, both state law and the Due Process Clause required hospital officials to hold a hearing to determine whether Burch was a danger to himself or others before admitting him to the hospital. See *id.* at 123, 131, 134. The defendants nonetheless argued that under the *Parratt-Hudson* doctrine, denying Burch a preadmission hearing did not deny him due process because that failure was "a random, unauthorized violation of the Florida statutes governing admission of mental patients." 494 U.S. at 115. This Court rejected that view of *Parratt* and *Hudson*. "[T]hose cases," this Court explained, "do not stand for the proposition that in every case where a deprivation is caused by an 'unauthorized . . . departure from established practices,' state officials can escape § 1983 liability simply because the State provides tort remedies." *Id.* at 138 n.20 (citation omitted). Instead, the Court held that the "proper inquiry under *Parratt* is 'whether the state is in a position to provide for predeprivation process.'" *Id.* at 130 (quoting *Hudson*, 468 U.S. at 534) (emphasis omitted). In the case before it, this Court noted, the deprivation of Burch's liberty was predictable and holding a preadmission hearing was clearly feasible. *Id.* at 136-37. Moreover, the "deprivation here is 'unauthorized only in the sense that it was not an act sanctioned by state law, but, instead, was a 'deprivation of constitutional rights * * * by an official's abuse of his

position.'" *Ibid.* (citation omitted). *Id.* at 138. Accordingly, this Court explained, "[w]e conclude that petitioners cannot escape § 1983 liability by characterizing their conduct as a 'random, unauthorized' violation of Florida law which the State was not in a position to predict or avert, so that all the process Burch could possibly be due is a postdeprivation damages remedy." *Ibid.*

B. The Present Circuit Split

The courts of appeals are avowedly divided over whether *Parratt* and *Hudson* create an exception to the rule of *Loudermill*.

1. The First and Seventh Circuits have held that, under *Parratt-Hudson*, no due process violation occurs when a government official denies a pre-deprivation hearing to a tenured employee, so long as the denial is also in violation of state law and the state provides a post-deprivation remedy that offers the employee a meaningful opportunity to challenge the termination. The First Circuit applied that rule in this case, as it has in a number of prior employment cases. See Pet. App. 13a-14a; *O'Neill* v. *Baker*, 210 F.3d 41, 50 (2000); *Cronin* v. *Town of Amesbury*, 81 F.3d 257, 260 (1996).

The Seventh Circuit reached the same conclusion in *Lolling* v. *Patterson*, 966 F.2d 230 (1992). In that case, a deputy alleged that the Sheriff violated his due process rights by summarily suspending him without pay. *Id.* at 232. The Seventh Circuit held that under *Parratt-Hudson*, the plaintiff's "due process rights were not violated" because the denial of a pre-suspension hearing contravened state law and, therefore, was "random and unauthorized." *Id.* at 233-34.[4]

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[4] The court of appeals assumed that the employee was entitled to a pre-suspension hearing under the Due Process Clause. This Court subsequently held that a sufficiently prompt post-suspension hearing is constitutionally adequate when there is substantial assurance that the suspension was not baseless or unwarranted. See

See also, *e.g.*, *Robinson* v. *Winslow*, 88 Fed. Appx. 93, 95 (CA7 2004) (failure to provide notice required by Due Process Clause prior to forfeiture of assets was "random and unauthorized" because it violated state law and, therefore, due process satisfied by post-seizure remedy) (unpublished); *Strasburger* v. *Board of Educ.*, 143 F.3d 351, 358 (CA7 1998) (dismissing due process claim of tenured teacher who alleged he was dismissed without a pre-termination hearing, on the ground that he "has not alleged or shown that Illinois postdeprivation remedies are lacking").

2. Four other circuits have squarely rejected this view. In *Fields* v. *Durham*, 909 F.2d 94, 96-97 (1990), for example, the Fourth Circuit rejected the argument that the *Parratt-Hudson* doctrine precluded the due process claim of a tenured professor who alleged that he was terminated from his position as a dean and faculty member without an adequate pre-termination hearing. In a prior opinion, the court of appeals had concluded that the professor's "complaint alleged at most a random and unauthorized failure of college officials to follow state procedures in connection with his termination" and therefore under *Parratt-Hudson*, "due process was satisfied by the meaningful postdeprivation remedies available under Maryland law." *Id.* at 96. However, when this Court vacated and remanded the case for reconsideration in light of *Zinermon* v. *Birch*, 494 U.S. 113 (1990), the Fourth Circuit rejected its prior reliance on the *Parratt-Hudson* doctrine. The relevant question in deciding whether a pre-termination hearing was constitutionally required was not

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Gilbert v. *Homar*, 520 U.S. 924, 931 (1997). However, the Seventh Circuit's construction of the *Parratt-Hudson* doctrine did not turn on the particular type of employment action at issue and would apply equally in a termination case. See, *e.g.*, *Sweeney* v. *Bausman*, No. 88-C-20370, 1992 U.S. Dist. LEXIS 19677 (D. Ill. 1992) (under *Lolling*, suit challenging dismissal of deputies without state-required pre-termination hearing was barred by *Parratt-Hudson*).

whether the state's denial of such a hearing was "unauthorized," the court held; rather it was whether, absent such a hearing, the risk that the state would erroneously deprive the employee of his job was "foreseeable." *Id.* at 97. And because the risk of "erroneous deprivation of a public education official's property interest in employment" was foreseeable, the Fourth Circuit found *Parratt-Hudson* inapplicable. *Ibid.*

The Fifth Circuit reached the same conclusion in *Findeisen* v. *North East Independent School District*, 749 F.2d 234, 238-39 (1984), in which a tenured school teacher was constructively discharged without a pre-termination hearing. The court concluded that *Parratt* simply indicated that "the imperative of a predeprivation hearing wanes when impractical, as in a negligent tort situation," but that "absent the necessity of quick action by the State or the impracticality of providing any predeprivation process, a postdeprivation hearing [is] constitutionally inadequate." *Id.* at 238 (citation omitted). The court held that because "a school board can easily hold a meaningful predeprivation hearing to properly consider whether to discharge a tenured teacher," the rule of *Parratt* did not apply. *Id.* at 239.

In *Dwyer* v. *Regan*, 777 F.2d 825 (1985), the Second Circuit likewise upheld a due process challenge by a government accountant who was terminated by the head of his department without a hearing. The district court had dismissed the complaint on the ground that the failure to provide a hearing was "unauthorized by the State and, since the State could not have anticipated such unauthorized acts, the failure to provide [the plaintiff] with a pretermination hearing did not, according to *Parratt* and *Hudson*, violate due process." *Id.* at 832. The Second Circuit "reject[ed] this view," concluding that the doctrine does not apply when "the depriving actions were taken by a high-ranking official having final authority over the decision-making process, * * * they [are] not random or unauthorized within the meaning of *Parratt*," even if in contravention of state or local law. *Ibid.*

As the First Circuit acknowledged in this case, its interpretation of the scope of the *Parratt-Hudson* doctrine also conflicts with the Ninth Circuit's decision in *Honey* v. *Distelrath*, 195 F.3d 531 (1999). See Pet. App. 14a n.6. In *Honey*, a tenured prison guard was terminated because of allegations of misconduct. The parties did not dispute that the only pre-termination process provided to the guard was constitutionally inadequate because he was not given access to any of the documentary evidence upon which the allegations of misconduct were based. *Id.* at 532. The employer nonetheless argued that the lack of an adequate pre-termination hearing was excused by *Parratt-Hudson* because the "deprivation resulted from actions that were in violation of established law" and thus, "the conduct was random and unauthorized." *Id.* at 533-34. The Ninth Circuit rejected this argument, holding that "even acts in violation of established law may be considered 'authorized.'" *Id.* at 534. Accordingly, the court held that "the acts at issue in this case were not random and unauthorized because the defendants in this case had the authority to effect the very deprivation complained of, and the duty to afford [the plaintiff] procedural due process." *Ibid.* Although the decision in *Honey* did not involve the complete denial of a pre-termination hearing, the Ninth Circuit's reasoning makes clear that it would not find petitioner's claims barred by *Parratt-Hudson*.

3. This division and confusion is untenable. Consistent with *Loudermill*, civil service schemes throughout the country have incorporated the right to a pre-termination hearing for tenured employees in order to comply with the requirements of the Due Process Clause.[5] The decisions of the First and

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[5] For just a few of the examples of these schemes prevalent through the nation, see, *e.g.*, Ala. Code 36-26-103; Ky. Rev. Stat. 18A.095, 151B.055, 281.771-.772; Mass. Gen. Laws ch. 35, § 51; Mich. Stat. Ann. 122A.40; Nev. Rev. Stat. 284.390; N.Y. Civ. Serv. 75; Ohio Rev. Code 124.34; 74 Okla. St. Ann. 840-6.4; W.

Seventh Circuits, however, now raise the question whether the right recognized in *Loudermill* will continue to have any practical significance. For in those circuits, incorporation of the *Loudermill* requirement into state law ironically relieves state officials of the constitutional obligation to actually provide such hearings in practice.

Thus, as the conflicting state of the law now stands, a tenured government employee summarily discharged in Boston or Chicago effectively has no federal redress when the hearing is not provided, while the courts in New York and Los Angeles will ensure that the hearing required by *Loudermill* is not only promised by state law, but actually delivered in practice. The abundance of cases addressing the question shows that the question is not only important, but recurring. And while more than two decades have passed since this Court decided *Loudermill*, the courts of appeal show no signs of resolving this division on their own. This Court should not permit this disparity in treatment, potentially affecting hundreds of thousands of public employees throughout the nation, to persist any longer.

4. Review in this case is moreover appropriate because it would help bring certainty to what one judge has described as a "doctrinal swamp" in need of "clarification by the Supreme Court." *O'Neill* v. *Baker*, 210 F.3d 41, 51 (CA1 2000) (Selya, J., concurring in judgment). See also *Caine* v. *Hardy*, 943 F.2d 1406, 1415 (CA5 1991) ("[T]he courts of appeals have not found *Zinermon* easy to interpret."); *Easter House* v. *Felder*, 910 F.2d 1387, 1409 (CA7 1990) (Easterbrook, J., concurring) (describing *Parratt*, *Hudson*, and *Zinermon* as forming a line of precedent "resembling the path of a drunken sailor," "leav[ing] judges of the inferior federal courts in a

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Va. Code 18A-2-8; Miss. Code Ann. 21-31-23, 21-31-71; see also, *e.g.*, *Odum* v. *University of Alaska, Anchorage*, 845 P.2d 432, 434 (Alaska 1993) (state constitution requires pre-termination hearing); Clark County Code 2.40.040 (county code requires pre-termination hearings).

difficult position, because any effort to reconcile and apply the cases will be met with a convincing demonstration * * * that there is a fly in the ointment").

The Sixth Circuit, for example, has acknowledged that its cases reflect a profound confusion about the proper application of the doctrine in the employment context, leading to inconsistent results for similarly situated employees. See *Mitchell* v. *Fankhauser*, 375 F.3d 477, 482 (CA6 2004) (collecting cases).

Courts have also reached divergent conclusions about the doctrine's application in other contexts. For example, in *Easter House* v. *Felder*, 910 F.2d 1387 (1990), the Seventh Circuit held that *Parratt-Hudson* barred a claim that state officials violated the Due Process Clause by denying renewal of an adoption agency's license without a prior hearing because the denial of the hearing was also in violation of state law. The *Parratt-Hudson* doctrine, the court held, precludes a due process suit to "remedy deprivations which occur at the hands of a state employee who is acting in direct contravention of the state's established policies and procedures which have been designed to guarantee the very protections which the *employee* has now chosen to ignore." *Id.* at 1404.[6] In *Plumer* v. *State of Maryland*, 915 F.2d 927 (CA4 1990), however, the Fourth Circuit reached the opposite conclusion with respect to an indistinguishable licensing case. In *Plumer*, state employees revoked a woman's driver's license without affording her a pre-revocation hearing, in violation of state procedures. Reviewing the same cases from this Court, the Fourth Circuit concluded that *Parratt-Hudson*

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[6] See also *Birkenholz* v. *Sluyter*, 857 F.2d 1214, 1217 (CA8 1998) (doctrine applied to bar due process claim by nurse found guilty of patient neglect at nursing home by state licensing officials without a hearing because the nurse "complains solely of the 'arbitrary and capricious' behavior of defendants, and does not challenge the underlying procedures that authorized defendants' actions").

was inapplicable. In direct conflict with the view of the Seventh Circuit, the court held that "[w]hen a state government can and does provide a predeprivation hearing and charges its employees with effecting the deprivation complained of, the availability of an adequate state postdeprivation remedy does not, standing alone, satisfy the Due Process Clause." *Id.* at 931.

5. This case presents an ideal vehicle for resolving the circuit split. The First Circuit's construction of the *Parratt-Hudson* doctrine was determinative of petitioner's due process claims. See Pet. App. 11a-16a. Moreover, the conflict is squarely presented by the facts of this case – the precise opposite result would have been reached in the Second, Fourth, Fifth, or Ninth Circuits, each of which has upheld indistinguishable claims against a *Parratt-Hudson* defense. Indeed, the relevant facts in petitioner's case are remarkably similar to those in the cases forming the circuit split, many of which involved denials of pre-deprivation hearings to tenured law enforcement officers by officials who were authorized by state law to effect the deprivation but required by both state law and *Loudermill* to provide a hearing first. Compare Pet. App. 3a-4a (termination of sheriff's deputy without hearing) with *Lolling*, 966 F.2d at 232 (no hearing prior to suspension of sheriff's deputy without pay) and *Honey*, 195 F.3d at 532 (termination of prison guard without prior hearing).

II. The First Circuit's Interpretation Of The *Parratt-Hudson* Doctrine Conflicts With The Decisions Of This Court.

The decision of the court of appeals also warrants review because it is contrary to this Court's precedents. *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), answered the basic constitutional question posed in this case, holding that a tenured public employee like petitioner has a federal constitutional right to a hearing *before* he is terminated, regardless of the availability of post-termination

remedies. The court of appeals' conclusion to the contrary is based on a misconception of the *Parratt-Hudson* doctrine, a misconception that notably has already been corrected once by this Court in *Zinermon* v. *Burch*, 494 U.S. 113 (1990). Correction is required again, however, as both the First and Seventh Circuits continue to fundamentally misapply the *Parratt-Hudson* doctrine to deprive public employees within their jurisdiction of clearly established due process rights.

A. *The Court Of Appeals Misapplied* Parratt-Hudson *In Conflict With This Court's Decision In* Loudermill.

The decision of the court of appeals is incompatible first and foremost with *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), which established petitioner's unqualified right to a pre-termination hearing. The *Parratt-Hudson* doctrine, which applies when a pre-deprivation hearing is infeasible, simply has no application in the context of employment termination, in which a pre-deprivation hearing is *always* feasible.

1. In *Loudermill*, this Court fully considered the conditions under which a pre-termination hearing is required and reached an unambiguous conclusion: "The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." 470 U.S. at 546. The Court specifically rejected the claim that post-termination procedures were sufficient to satisfy due process. See *id.* at 537-38. The Court observed that "some opportunity for the employee to present his side of the case is recurringly of obvious value in reaching an accurate decision." *Id.* at 543. Even when there are no factual disputes and the authority to terminate an employee is undisputed, "a prior hearing facilitates the consideration of whether a permissible course of action is also an appropriate one." *Id.* at 543 n.8. Indeed, because it is so difficult to convince officials that they have made a mistake after the decision has been made, "the only meaningful opportunity to invoke the discretion of the

decisionmaker is likely to be before the termination takes effect." *Id.* at 543.

Yet, in this case, the court of appeals held precisely the opposite, concluding that all the process petitioner was actually due was an adequate post-termination remedy. Pet. App. 15a. The only reason the court gave for this diametrically opposed result was that the Sheriff decided to flout this Court's instructions in *Loudermill* and, in so doing, violated state law as well. But nothing in *Loudermill* suggests that the Court intended perversely to excuse a violation of the Due Process Clause so long as the defendant was simultaneously violating state law.

Indeed, the Court's opinion in *Loudermill* strongly suggests otherwise. The employer in that case argued that because the Due Process Clause protects only property interests created by state law, state law may also define the process that must be provided before that property may be taken. 470 U.S. at 539-40. Because state law provided only for a post-termination hearing, the employer argued, that was all the procedural protection required under the Due Process Clause. This Court rejected this assertion that a pre-termination hearing is constitutionally optional simply because state law does not require one. *Id.* at 541. While state law may define what constitutes a property interest under the Due Process Clause, this Court explained, federal constitutional law defines the process a state must afford before depriving individuals of that property interest. *Id.* at 539-41. Yet, under the First Circuit's rule, state law may effectively render a pre-termination hearing constitutionally optional by (ironically) requiring one. In such states, if public officials do not provide a pre-termination hearing, due process is satisfied by providing the post-termination hearing this Court held inadequate in *Loudermill*.[7]

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[7] Consequently, while one might suppose that constitutional doctrines would encourage compliance with state law, the respondents in this case escaped liability in the lower courts

2. Certainly nothing in *Parratt* or *Hudson* justifies this result. Those cases did not create a sweeping exception to the due process requirements established in this Court's cases. Instead, the doctrine has a more limited, context-specific function. "The underlying rationale of *Parratt* is that when deprivations of property are effected through random and unauthorized conduct of a state employee, predeprivation procedures are simply 'impracticable' since the state cannot know when such deprivations will occur." *Hudson*, 468 U.S. at 533.[8] An adequate post-deprivation remedy is constitutionally sufficient in such circumstances because "in most cases it is not only impractical, but impossible, to provide a meaningful hearing before the deprivation." *Parratt*, 451 U.S. at 541. In short, under *Parratt-Hudson*, *post*-deprivation process is constitutionally sufficient when *pre*-deprivation process is infeasible.

The same is manifestly *not* true in employment termination cases, as *Loudermill* squarely holds. See 470 U.S. at 544 ("[A]fforded the employee an opportunity to respond prior to termination would impose neither a significant administrative burden nor intolerable delays."). In this case, for example, the deprivation of the employee's property interest (*i.e.*, the loss of his job) was not "random and unauthorized" – as part of his role in managing the Department, the Sheriff was authorized, under appropriate circumstances, to terminate departmental employees. And because the Sheriff's decision to terminate petitioner was a foreseeable exercise of his unquestioned authority over personnel decisions, providing a meaningful pre-termination

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precisely because their conduct violated state legal requirements. The oddity of this result is strong reason to conclude that the First Circuit's interpretation is wrong.

[8] By requiring that conduct be both "unauthorized" *and* "random," this Court made clear that the *Parratt-Hudson* doctrine would not apply to unauthorized conduct that occurs with sufficient frequency to make it predictable. See *Zinermon*, 494 U.S. at 136.

hearing was clearly feasible. Indeed, state law required it. See Mass. Gen. Laws ch. 35, § 51. Consequently, the *Parratt-Hudson* doctrine had no application to this case.

The court of appeals reached the opposite conclusion only because it asked the wrong legal question. Rather than asking whether the "*deprivation*[] *of property* [was] effected through random and unauthorized conduct of a state employee," *Hudson*, 468 U.S. at 533 (emphasis added), the court asked whether the denial of a *pre-termination hearing* was "random and unauthorized." That is, the First Circuit asked whether the Sheriff was authorized to deprive petitioner of his constitutional right to a hearing, rather than asking whether the Sheriff was authorized to deprive petitioner of his state-created property interest in his job.[9] That is *not* the question under *Parratt-Hudson*, because *every* decision to violate the Constitution is unauthorized, and in many cases it will be random as well. The question instead is whether the government could reasonably be expected to anticipate petitioner's termination and provide a prior hearing. Had the court of appeals asked *that* question, it would have been compelled to conclude that the *Parratt-Hudson* doctrine provided no defense in this case.

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[9] Even if the question asked by the court of appeals was the right one, the decision to deny petitioner a pre-termination hearing was not "unauthorized" under any reasonable sense of that term in this context. This is not a case challenging the conduct of low-level prison guards, as in *Parratt* and *Hudson*. The actions of high-level policy-making officials like the Sheriff and the County Board members are attributable to the County itself. See., *e.g.*, *St. Louis* v. *Praprotnik*, 485 U.S. 112, 123 (1988) (holding that "municipal officials who have 'final policymaking authority' may by their actions subject the government to § 1983 liability"). Their conduct should not, therefore, be considered "unauthorized" within the meaning of *Parratt-Hudson*. See *Dwyer* v. *Regan*, 777 F.2d 825, 832-33 (CA2 1985).

By asking the wrong question, the First Circuit radically transformed this Court's settled due process jurisprudence. As the court of appeals acknowledged, under its view of the doctrine, there is no federal remedy for even the clearest violation of the Due Process Clause so long as the violation arises from "a flaw in the official's conduct rather than a flaw in the state law itself." Pet. App. 13a-14a. Under this view, there would be no due process violation if, for example, law enforcement officials had incarcerated Parratt and Hudson without a trial. Such a flagrant violation of the Due Process Clause would undoubtedly violate state law and, therefore, would be considered "random and unauthorized" under the First Circuit rule. Accordingly, the First Circuit would hold in such circumstances that so long as the state provided an adequate post-imprisonment remedy (*e.g.*, a habeas or wrongful imprisonment suit), the imprisonment without trial would not violate the Due Process Clause. Or, to take a related context, the First Circuit presumably would decline to hear a claim from a resident of a state mental institution who claimed that he was institutionalized without a hearing, in violation of state commitment procedures and the Due Process Clause. Such a claim, the court would conclude, amounts to no more than the assertion that "a government official has committed a random and unauthorized act [by] misappl[ying] state law to deny an individual the process due under a correct application of state law." Pet. App. 13a. Yet, as discussed next, this Court rejected precisely that conclusion in a case decided more than fifteen years ago.

B. This Court Rejected The Same Construction Of The Parratt-Hudson *Doctrine In* Zinermon.

If there were any doubt that the First Circuit misconstrued the proper scope of the *Parratt-Hudson* doctrine, that doubt is removed by this Court's decision in *Zinermon* v. *Burch*, 494 U.S. 113 (1990), which rejected essentially the same interpretation of *Parratt* and *Hudson*.

1. In *Zinermon*, the plaintiff, Darrell Burch, was taken to a mental health facility after he was found wandering along a Florida highway. Because Burch was manifestly mentally incompetent, and therefore could not validly consent to voluntary admission to the facility, both state law and the Due Process Clause required officials to hold an involuntary admission hearing prior to subjecting Burch to institutionalization. See *id.* at 121-24; *Addington* v. *Texas*, 441 U.S. 418, 425 (1979). But rather than providing Burch the required hearing, hospital officials simply asked Burch to sign a voluntary admission form and then confined him to the facility when he complied.

Burch subsequently filed suit against the officials under Section 1983, asserting violations of his rights under the Due Process Clause. As this Court described, the district court dismissed Burch's complaint for essentially the same reasons given by the court of appeals for affirming the judgment against petitioner in this case:

> The [district] court granted that motion, pointing out that Burch did not contend that Florida's statutory procedure for mental health placement was inadequate to ensure due process, but only that petitioners failed to follow the state procedure. Since the State could not have anticipated or prevented this unauthorized deprivation of Burch's liberty, the District Court reasoned, there was no feasible predeprivation remedy, and, under *Parratt* and *Hudson*, the State's postdeprivation tort remedies provided Burch with all the process that was due him.

494 U.S. at 115.

This Court disagreed, observing that its prior cases long ago "rejected the view that § 1983 applies only to violations of constitutional rights that are authorized by state law, and does not reach abuses of state authority that are forbidden by the State's statutes or Constitution or are torts under the

State's common law." *Id.* at 124 (citing *Monroe* v. *Pape*, 365 U.S. 167 (1961)). The *Parratt-Hudson* doctrine did not overrule this precedent, this Court held, but rather represented an application of the ordinary due process balancing test to unique circumstances in which it was "impossible for the State to predict [the challenged] deprivations and provide predeprivation process." *Id.* at 129. On the other hand, this Court explained, in "situations where the State feasibly can provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking." *Id.* at 132.[10]

In light of these principles, *Parratt-Hudson* provided no defense to the state officials' failure to provide Burch with the pre-deprivation hearing required by state law and the Due Process Clause. "First, petitioners cannot claim that the deprivation of Burch's liberty was unpredictable," because it arose during a deliberate process specifically designed to determine whether or not to admit a patient to the institution. *Id.* at 136. "Second, we cannot say that predeprivation process was impossible here." *Id.* at 136-37. Indeed, the feasibility of providing pre-deprivation process was demonstrated by the fact that state law required it. *Id.* at 136-37. "Third, petitioners cannot characterize their conduct as 'unauthorized' in the sense the term was used in *Parratt* and *Hudson*." *Id.* at 138. "The State delegated to them the power and authority to effect the very deprivation complained of here, Burch's confinement in a mental hospital, and also delegated to them the concomitant duty to initiate the procedural safeguards set up by state law to guard against unlawful confinement." *Ibid.* Accordingly, this Court concluded that the "deprivation here is 'unauthorized' only in the sense that it was not an act sanctioned by state law, but,

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[10] Notably, for this proposition, the Court cited its prior decision in *Loudermill*, requiring pre-termination hearings for tenured public employees. *Ibid.*

instead, was a 'depriv[ation] of constitutional rights * * * by an official's abuse of his position.'" *Ibid.* (quoting *Monroe*, 365 U.S. at 172 n.20).

2. This case is on all fours with *Zinermon*. First, respondents cannot claim that the petitioner's termination was unpredictable, because it was entirely foreseeable that the Sheriff, as head of the department, would on occasion seek to terminate department employees. Second, providing a hearing before depriving petitioner of his property interest in his job was eminently feasible, as demonstrated by the fact that a pre-termination hearing was required both by Massachusetts law and by this Court's decision in *Loudermill*. Third, petitioners cannot reasonably "characterize their conduct as 'unauthorized' in the sense the term is used in *Parratt* and *Hudson*," *Zinermon*, 494 U.S. at 138, given that Massachusetts law delegated to them both the power and authority to terminate department employees and "the concomitant duty to initiate the procedural safeguards set up by state law to guard against" wrongful termination. *Ibid* Respondent McDonough's conduct was only unauthorized in the same sense as the conduct in *Zinermon* – in exercising his authorized power to deprive petitioner of his job, the Sheriff failed to follow the procedures demanded by both state law and the Due Process Clause.

C. *The Court Of Appeals' Decision Conflicts With This Court's Conclusion in* Monroe *v.* Pape *That Plaintiffs May Sue State Officials For Constitutional Violations That Also Violate State Law.*

Respondents' arguments in this case also bear a striking resemblance to the arguments made to, and rejected by, this Court in *Monroe* v. *Pape*, 365 U.S. 167 (1961). In that case, police officers invaded the plaintiffs' home without a warrant and detained the father for questioning for ten hours without taking him before a magistrate or allowing him access to a lawyer. The defendants argued that their conduct was not subject to a federal remedy under 42 U.S.C. 1983 because the

officers had "no authority under state law, state custom, or state usage to do what [they] did." *Id.* at 172. The plaintiffs should not be heard to complain of this unauthorized conduct in federal court, the defendants argued, because "under Illinois law a simple remedy is offered for that violation and that, so far as it appears, the courts of Illinois are available to give petitioners * * * full redress." *Id.* at 172.

This Court rejected that argument. "There can be no doubt at least since *Ex parte Virginia* that Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." 365 U.S. at 171-72 (citation omitted). Moreover, this Court reasoned, Congress had exercised that power when it enacted Section 1983 without any caveat for constitutional violations that are unauthorized under state law and for which state law provides a remedy. See *id.* at 193 ("It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked.").

The decision of the court of appeals here effectively nullifies *Monroe* by requiring the plaintiff to prove that the conduct that violates his due process rights was authorized under state law in order to proceed with his constitutional claim (at least when state law provides a post-deprivation process to contest the decision). Yet nothing in *Parratt* or *Hudson* indicated any intent to overrule any portion of *Monroe* or to establish a new form of immunity from suit for constitutional violations. This Court has already developed other doctrines to protect governments from liability for the unauthorized acts of their employees.[11] Government officials

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[11] The Eleventh Amendment bars constitutional claims against States without their consent, and Section 1983 does not in any event permit lawsuits against states. See, *e.g.*, *Will* v. *Mich. Dep't*

are likewise protected from unwarranted suits alleging due process violations under the doctrine of qualified immunity. See, *e.g.*, *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982). Ironically, however, while that doctrine denies immunity to officials when their conduct is in violation of clearly established law, *ibid.*, the court of appeals' construction of *Parratt-Hudson* provides an equivalent immunity *only* when the state official's conduct is so clearly illegal that it may be characterized as "unauthorized" by state law.

That incongruous result is yet another indication that the First Circuit has misconstrued the scope of the *Parratt-Hudson* doctrine. That doctrine was designed simply to avoid imposing procedural requirements that are impossible to satisfy and to avoid the prospect of federalizing common-law torts committed by state officials, a purpose for which the Due Process Clause was never intended. See *Parratt*, 451 U.S. at 544. As this Court held in *Loudermill*, however, the Due Process Clause *was* designed to ensure that before a government employer terminates an employee for cause, it takes the time to hear the employee's side of the story. 470 U.S. at 542-45.

In this case, a pre-termination hearing would have afforded petitioner a chance to demonstrate that he remained qualified for his position, despite his support for the Sheriff's political rival and despite reports the Sheriff may have

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of State Police, 491 U.S. 58, 71 (1989); *Quern* v. *Jordan*, 440 U.S. 332, 344 (1979). And while the Eleventh Amendment does not extend to local governments, this Court's decision in *Monell* v. *New York City Department of Social Services*, 436 U.S. 658 (1978), generally shields local governments from liability for the random and unauthorized actions of their employees. *Id.* at 695 (local government only liable when constitutional injury caused by "execution of a government's policy or custom"); see also *St. Louis* v. *Praprotnik*, 485 U.S. 112, 121 (1988) (same).

received from subordinates.[12] Indeed, the hearing would have provided the Sheriff the opportunity to judge the petitioner's attitude and qualifications for himself and to consider whether the dismissal was warranted. To the extent the decision was based on a perceived lack of political loyalty, petitioner would have been able to show that this reason would not constitute the type of "just cause" necessary to sustain a termination of a tenured county employee under state law[13] and was, furthermore, unnecessary in his particular case because his support for the prior sheriff would not have impeded his ability to implement the policies of the new administration. See *Loudermill*, 470 U.S. at 543 & n.8 (observing that pre-termination hearings serve to ensure informed exercise of officials' discretion). The loss of that opportunity is precisely the type of harm the Due Process Clause was intended to prevent.

D. Even If The Parratt-Hudson *Doctrine Applied In This Context, There Was No Adequate Post-Termination Remedy Available*

Even if the Sheriff's conduct in this case was considered random and unauthorized, the *Parratt-Hudson* doctrine would still have no application in a case such as this, in which the only post-deprivation remedy is a civil lawsuit seeking reinstatement.

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[12] Although respondents argued at the summary judgment stage that they were permitted under the First Amendment to terminate petitioner on the basis of political affiliation, they also asserted that, in fact, respondent McDonough terminated petitioner because he had been told by his subordinates that petitioner displayed a poor attitude during an interview. C.A. J.A. 105, 126.

[13] Even if the First Amendment did not prohibit respondents from terminating petitioner's employment because he supported the Sheriff's opponent in the prior election, state civil services law do. See *Sheriff of Plymouth County* v. *Plymouth County Pers. Bd.*, 440 Mass. 708, 714 (2004) (lack of political affiliation is not "just cause" within the meaning of the state civil service code).

Even under *Parratt* and *Hudson*, the Due Process Clause is satisfied only if the state provides "a meaningful postdeprivation remedy for the loss." *Hudson*, 468 U.S. at 533. A state that fails to provide a sufficient post-deprivation remedy violates the Due Process Clause even if no pre-deprivation remedy would have been possible. While a civil tort suit may be an adequate remedy when the state deprives an individual of a hobby kit or personal papers, that does not mean that the same post-deprivation remedy is constitutionally adequate in the employment termination context. Rather, in determining what process is due, the Court balances the government's interests against both the risk of error and the "private interest that will be affected by the official action." *Mathews* v. *Eldridge*, 424 U.S. 319, 335 (1976).

In *Loudermill*, this Court recognized that in the special context of employment terminations, *no* form of *post*-termination remedy adequately balances the public and private interests at stake, given "the severity of depriving a person of the means of livelihood." *Loudermill*, 470 U.S. at 543. Indeed, the Court directly rejected the assertion that due process was satisfied by Ohio's provisions for post-termination hearings subject to judicial review. See 470 U.S. at 535-36. The post-termination remedies afforded under Massachusetts are essentially identical to the Ohio post-termination remedies found constitutionally inadequate in *Loudermill*. See Mass. Gen. Laws ch. 35, § 51 (permitting post-termination appeal to county personnel board, followed by judicial review). Accordingly, even if the Sheriff's conduct were appropriately considered "random and unauthorized" within the meaning of *Parratt-Hudson*, the doctrine still would not apply because no post-termination process can provide an adequate remedy for a wrongful termination decision.

Alternatively, even if it were possible that some form of post-termination remedy could be constitutionally sufficient under *Parratt-Hudson*, the remedy offered to petitioner in this

case was entirely inadequate. Petitioner requested, but was denied, post-termination review by the county personnel board. Pet. App. 4a. As a result, a civil suit seeking reinstatement in state court was the only remaining remedy available. See Mass. Gen. Laws ch. 35, § 51. That remedy is wholly insufficient in the employment termination context. In "determining what process is due, account must be taken of 'the *length*' and '*finality* of the deprivation.'" *Gilbert* v. *Homar*, 520 U.S. 924, 932 (1997) (emphasis in original) (citation omitted). Thus, in *Gilbert*, this Court held that an employee could be suspended temporarily without pay and without a pre-suspension hearing but only if there was substantial assurance that the suspension was not baseless or unwarranted *and* "the suspended employee receives a sufficiently prompt postsuspension hearing." *Id.* at 931-32. In this case, petitioner was not only *permanently* terminated, but faced the prospect of months or years of litigation to secure a post-termination remedy in state court. See, *e.g.*, United States Bureau of Justice Statistics, *Contract Cases in Large Counties* 7 (1992) (average duration of employment litigation in sample of state courts was 20.2 months). Such review cannot be considered "sufficiently prompt" under any reasonable definition of the term. Indeed, in *Gilbert*, this Court remanded the case for further proceedings because it was not clear whether a seventeen-day delay between suspension and hearing was "sufficiently prompt." *Id.* at 935-36. Nothing in any of this Court's cases supports the view that such a costly and time-consuming remedy comports with the requirements of the Due Process Clause.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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August 9, 2005

APPENDIX

United States Court of Appeals

For the First Circuit

No. 04-2020

RUSSELL J. HADFIELD,

Plaintiff, Appellant,

JOSEPH M. PALOMBO; KEVIN DALTON; GEORGE B. MADSEN, JR.,

Plaintiffs,

v.

JOSEPH McDONOUGH, in his individual and official capacity as Sheriff of Plymouth County; MATTHEW HANLEY, in his individual and official capacity as Special Sheriff of Plymouth County; CHARLES LINCOLN, in his individual and official capacities; COLEMAN McDONOUGH, in his individual and official capacities; JOHN P. REARDON, in his official capacity as Commissioner of the County of Plymouth; ROBERT J. STONE, in his official capacity as County Commissioner of the County of Plymouth; PETER G. ASIAF, JR., in his official capacity as Commissioner of the County of Plymouth; JOHN F. McLELLAN, in his official capacity as the Treasurer of the County of Plymouth,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

[Hon. George A. O'Toole, Jr., *U.S. District Judge*]

Before
Lynch, *Circuit Judge*,
Campbell, *Senior Circuit Judge*,
and Howard, *Circuit Judge*.

Ross D. Ginsberg with whom *Richard D. Vetstein* and *Gilman, McLaughlin & Hanrahan, LLP* were on brief for appellant.

Kevin F. Moloney with whom *Roger T Manwaring, Barron & Stadfeld, P.C., Thomas M. Hoopes* and *Kelly, Libby & Hoopes, P.C.* were on brief for appellee Joseph F. McDonough.

Kenneth H. Anderson with whom *Thomas Drechsler* and *Finneran, Byrne & Drechsler, L.L.P.* were on brief for appellees Matthew Hanley, Charles Lincoln and Coleman McDonough.

May 11, 2005

HOWARD, *Circuit Judge*. In November 2000, Joseph McDonough defeated incumbent Charles Decas for the office of Plymouth County Sheriff. Shortly after assuming office, McDonough fired Russell J. Hadfield from his position as Assistant Deputy Superintendent in Field Services for Training ("ADS for Training"). Hadfield brought this federal action claiming that the termination violated his constitutional rights. He alleged that the Sheriff and three of his associates, Coleman McDonough, Matthew Hanley, and Charles Lincoln, unlawfully fired him on account of his support for Decas in the 2000 election. He also alleged that the Sheriff and the Plymouth County Commissioners illegally denied

him a hearing concerning his termination in violation of his due process rights. The district court awarded all defendants summary judgment. We affirm.

I.

We present the facts in the light most favorable to Hadfield. *See O'Neill* v. *Baker*, 210 F.3d 41, 44 (1st Cir. 2000). The Plymouth County Massachusetts Sheriff's Department has three primary responsibilities. It operates the Plymouth County Correctional Center, provides support to local police and fire departments, and oversees the service of civil process and other legal documents. The Department is headed by a popularly elected Sheriff and employs over 500 people. Hadfield worked for the Department in various capacities from 1983 until his termination. In May 2000, Hadfield was made ADS for Training, a position in which he was supervised by the Department's Director of Training. Among his duties, Hadfield supervised instructors, developed resources, arranged classes, researched curricula, and taught various courses.

In the period before the November 2000 election, Hadfield worked for Decas' reelection. To help in the effort, Hadfield held Decas signs at various rallies. On November 4, 2000, on his way to a Decas rally, Hadfield passed a rally at which he noticed many people holding signs supporting McDonough. Hadfield attended this rally while holding a Decas sign. At the rally, Hadfield was approached by two of McDonough's supporters, Charles Lincoln and Coleman McDonough. After telling Hadfield that he should not be attending the rally, Coleman McDonough told Hadfield, "Bad move, Bubba, bad career move." In a similarly threatening vein, Lincoln told Hadfield, "You weren't even on the list. Now you're at the top of the list."

After McDonough took office in December 2000, he initiated a Department reorganization. As part of this process, he and his staff interviewed senior holdovers from the prior administration, including the Assistant Deputy

Superintendents. Hadfield's interview took place in February 2001. Soon thereafter, Hadfield received a letter from McDonough informing him that he was immediately discharged from his post as ADS for Training.

McDonough did not provide Hadfield with notice or a hearing before taking this action. After receiving the termination letter, Hadfield sent a written hearing request to the Plymouth County Board of Commissioners, which serves as the county personnel board. The Commissioners denied Hadfield's request. Hadfield did not appeal this decision to the Massachusetts state courts.

Instead, in April 2001, Hadfield filed this 42 U.S.C. § 1983 action claiming political discrimination in violation of the First Amendment and the denial of procedural due process in violation of the Fourteenth Amendment. After a period for discovery, all defendants moved for summary judgment.

The discrimination defendants argued that Hadfield occupied a position for which political affiliation was a requirement and that he therefore was not entitled to bring a claim of unlawful political discrimination. *See, e.g.*, *Galloza* v. *Foy*, 389 F.3d 26, 28 (1st Cir. 2004) (stating that the First Amendment protection against politically motivated discharges does not extend to positions for which political affiliation is an appropriate requirement). The due process defendants argued that Hadfield was not entitled to a hearing because he did not have a property interest in continued employment under Massachusetts law, and that, even if he did have a right to hearing, his due process claim is barred by the so-called *Parratt-Hudson* doctrine. *See Parratt* v. *Taylor*, 451 U.S. 527 (1981); *Hudson* v. *Palmer*, 468 U.S. 517 (1984) (stating that a federal procedural due process claim may not be based on the random and unauthorized conduct of government officials so long as the state has provided an adequate postdeprivation remedy).

In a brief order, the district court awarded summary judgment for all defendants. The court agreed with the

discrimination defendants that political loyalty was a legitimate job requirement for the position of ADS for Training. As to the procedural due process claim, the court concluded that, even if Hadfield was entitled to a hearing, his federal rights were not violated because any deprivation of process to which Hadfield was entitled resulted from random and unauthorized conduct and the state provided adequate postdeprivation remedies. This appeal followed.

II.

A. Standard of Review

We review the entry of summary judgment *de novo*, viewing the record in the light most hospitable to the party opposing summary judgment. *See Padilla-García* v. *Guillermo Rodríguez*, 212 F.3d 69, 73 (1st Cir. 2000). We do not credit "conclusory allegations, improbable inferences, and unsupported speculation" in this analysis. *Medina-Muñoz* v. *R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990). Summary judgment is proper only if the record, read favorably to the non-moving party, reflects no genuine issues of material fact and the undisputed facts indicate that the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c).

B. Political Discrimination

We begin by considering whether the discrimination defendants met their summary judgment burden of demonstrating that the ADS for Training was a position for which political affiliation was an appropriate basis for dismissal.[1] As mentioned above, we perform this analysis by drawing all reasonable inferences in favor of Hadfield. But the question of whether a position is subject to political discharge is a legal question for the court, even if it presents a close call. *See Flynn* v. *City of Boston*, 140 F.3d 42, 44 (1st

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[1] The defendants denied that, in fact, they dismissed Hadfield because of his political views but assumed that this is a trialworthy issue for purposes of their summary judgment argument.

Cir. 1998); *McGurrin Ehrhard* v. *Connolly*, 867 F.2d 92, 93 (1st Cir. 1989).

The First Amendment right to association includes a qualified right to be free from discharge from public employment merely because of political affiliation. *See Elrod* v. *Burns*, 427 U.S. 347, 359-60 (1976). But the right does not extend to all public employees. *See id.* at 360. In *Elrod*, the Court recognized that the wholesale protection of public employees could undermine representative government by forcing those who win elective office to employ individuals who disagree with the prevailing candidate's (and presumably the electorate's) goals. *See id.* at 367; *Flynn*, 140 F.3d at 46. To permit the prevailing candidate sufficient leeway to enact his or her programs, individuals in policymaking and confidential positions were held to be excluded from the prohibition against politically motivated discharges. *See Elrod*, 427 U.S. at 367 & 375.

Four years later, in *Branti* v. *Finkle*, 445 U.S. 507, 518 (1980), the Court reaffirmed the constitutional protection against patronage dismissals but expanded upon the "policymaker/confidential employee" test. The Court instructed that a public employee is not protected from a politically motivated discharge if "the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Id.*

After *Branti*, this court and others have engaged in the process of developing a somewhat evolving standard for identifying those positions that fit within the exception articulated by the Supreme Court. *See Flynn*, 140 F.3d at 45 (describing the "porridge" of general statements and tests that have been applied in the wake of *Branti*). We have tended to ask (1) if the position deals with issues over which there can be partisan differences and (2) if the specific responsibilities of the position resemble those of a policymaker or other officeholder whose functions are such that party affiliation is

an appropriate criterion for holding the post. *See Galloza*, 389 F.3d at 29. We have recognized, however, that deciding whether a position is protected from political discharge is not "a matter of inserting variables into a known equation." *Id.* Rather, it requires a court to look closely at the position to identify its inherent duties and then to make a judgment about whether the position is one for which political affiliation is an appropriate requirement. *See Duriex-Gauthier* v. *Lopez-Nieves*, 274 F.3d 4, 10-11 (1st Cir. 2001).

With that said, our cases do yield some general principles which help demarcate the line between protected and non-protected positions. In *Flynn*, we surveyed our precedents to conclude that "the cases have regularly upheld against First Amendment challenge the dismissal on political grounds of mid- or upper-level officials or employees who are significantly connected to policymaking." 140 F.3d at 45. We explained that an employee is not immune from termination merely because the employee "stands apart from partisan politics," is not the ultimate decisionmaker in the agency, or is guided in some responsibilities by technical or professional standards. *Id.* at 46. "It is enough that the official [is] involved [in policy], if only as an adviser, implementer or spokesperson." *Id.*[2]

Application of our cases convinces us that political affiliation is an appropriate requirement for the position of ADS for Training. The Sheriff is involved in several areas which can be affected by partisan divisions. The Sheriff runs

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[2] These principles have led to rulings dismissing political discharge cases when brought by mid- to upper-level employees including a regional director of an administrative agency, the municipal secretary in a mayor's office, an officer in charge of human resources, a director of public relations, a superintendent of public works, and a director of a city's office of federal programs. *See Flynn*, 140 F.3d at 45. They have also yielded rulings permitting claims to proceed by lower-level employees including a cleaning supervisor and a career administrative aide. *See id.*

a prison and therefore must make numerous politically-influenced decisions about prison operations and the treatment of inmates -- some or many of which decisions could be the subject of partisan political contention. These decisions are embodied in Department policies and directives which are put into effect by Department employees working directly within the prison. These employees, in turn, learn about the new policies and directives primarily through training. The Sheriff's efforts to implement his agenda could therefore be frustrated by a training program which does not accurately reflect his views.

The ADS for the Training is a high-ranking employee in this politically important branch of the Department. According to the formal job description,[3] the ADS for Training supervises and directs the training program for Department personnel; develops instructor resources; arranges for classes and seminars; researches curricula, methods, policies, and procedures pertinent to training; develops and administers evaluative testing; instructs certain training courses; coordinates use of department training resources; assures that instructors meet training certification requirements; and develops the training schedule based on the availability of personnel.

In our view, this job description demonstrates that the ADS for Training is an "adviser, implementer, [and] spokesperson" concerning Department policy. *Flynn*, 140 F.3d at 46. The position's duties include researching methods, policies and procedures related to training and developing instructor resources. These duties illustrate that the ADS for Training works independently to revise and improve the training program. Indeed, Hadfield acknowledged that he advised the Director of Training (to

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[3] We have observed that the job description is the best, and sometimes dispositive, source for identifying the functions of the position. *See Duriex-Gauthier*, 274 F.3d at 8; *Roldan-Plumey* v. *Cerezo-Suarez*, 115 F.3d 58, 64-65 (1st Cir. 1997).

whom he reported) concerning proposed changes in training operations. There is no dispute then that the ADS for Training advises on training policy.

The ADS for Training is also a policy implementer. Subject to only "general supervision," the ADS for Training "supervises and directs the training program" for his or her assigned program areas within the Department. Open-ended responsibilities are a telltale sign that the position includes a policy implementing function. *See Galloza*, 389 F.3d at 32; *Duriex-Gauthier*, 274 F.3d at 10.

Finally, the ADS for Training acts as an internal spokesperson for the Sheriff. The officeholder is responsible for instructing certain courses and supervising the instructors. In these roles, the ADS for Training acts as the Sheriff's spokesperson by representing the Sheriff's views to the rank and file and to his subordinate instructors. *See Vazquez Rios* v. *Hernandez Colon*, 819 F.2d 319, 328 (1st Cir. 1987) (stating that a job requiring an officeholder to act as spokesperson for political official could not be done effectively except by one who shared the [official's] political beliefs). Hadfield acknowledges that he represented the views of the Sheriff as part of his duties.

The duties of the ADS for Training resemble other mid- to upper-level positions for which we have held political affiliation is an appropriate requirement. *See supra* n.2. For example, we held that the head of the Personnel and General Services Office in the Puerto Rico Office of the Ombudsman was a policymaking position. *See Duriex-Gauthier*, 274 F.3d at 10. We relied on the position's open-ended responsibilities for "planning and supervision of personnel activities" and the fact that the officeholder reported to those in the upper echelons of the agency. *Id.* Similarly, in *Flynn*, we held that the associate director for field operations of the Boston Community Centers was not protected from a political discharge. 140 F.3d at 45. The duties of that position included overseeing several programs, acting as a liason to

other agencies, and maintaining agency compliance with legal duties. *See id.*

Despite the policymaking or implementing duties inherent in the ADS for Training position, Hadfield contends that, in fact, he served in a primarily administrative role, and that the policy aspects of the training program were handled by the Director of Training. But the fact that Hadfield may not have been involved in such activities in the prior administration is of little significance. His job description could be read to encompass participation in policymaking and political affairs, and the Sheriff, in forming his new administration, could be frustrated by an ADS for Training whose view varied from the Sheriff's. A new administration should not be overly hamstrung in filling key positions with loyal employees simply because of the way the prior administration operated. *See Galloza*, 389 F.3d at 31 (stating that "the goal of the [*Branti*] analysis is not to shackle a new administration"). This is why the *Branti* analysis eschews reliance on "what functions a particular occupant of the position may in fact carry out from time to time" in favor of focusing on "the essential attributes of the position." *Id.* at 30.

Moreover, as we have already stated, an employee is not protected merely because he is a "subordinate within [his] own office[]." *Flynn*, 140 F.3d at 45 & 46. It is sufficient that an officeholder is responsible for implementing policies that derive from partisan decisions made by others.[4] *Id.* at 46. "These major responsibilities mean[] that political disagreements [between the ADS for Training] and his politically appointed [superiors] could lead to less effective implementation of political goals."[5] *Id.* at 45.

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[4] Of course an employee who merely implements policy is not thereby converted into one for whom political affiliation is a reasonable requirement.

[5] Hadfield also argues that summary judgment should have been denied because a Massachusetts Supreme Judicial Court decision holds that the position of classification and treatment

In sum, the evidence demonstrates that the ADS for Training is at or near the top of the Department's training program. The officeholder has broad power to advise policymakers, to implement policy, and to act as a spokesperson for the Sheriff to rank and file personnel. Because the training program is critical to the Sheriff's ability to implement his agenda, it is reasonable for the Sheriff to fill this position with an individual whom he believes is committed to his program. We therefore conclude that political affiliation is an appropriate requirement for the ADS for Training and that the district court correctly granted the discrimination defendants summary judgment on Hadfield's First Amendment claim.

C. Procedural Due Process

Hadfield alleges that the due process defendants violated his right to procedural due process by denying him a hearing concerning his termination. The due process defendants contend that Hadfield was not entitled to a hearing because he

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director within the Plymouth County Sheriff's Department was not a policymaking position because the position retained civil service protection under Massachusetts law. *See Sheriff of Plymouth County* v. *Plymouth County Personnel Bd.*, 802 N.E.2d 71, 76 (Mass. 2004). Hadfield contends that because the "director" classification is higher than his "assistant deputy sheriff" classification, his position also cannot be deemed as policymaking. There are two flaws in this argument. Neither the SJC decision nor Hadfield has provided information concerning the duties which the classification and treatment director performs. Without a description of the position's duties, we cannot discern whether it involves the kind of functions which we have concluded qualifies Hadfield's position as one for which political affiliation is an appropriate requirement. *See Flynn*, 140 F.3d at 44 (explaining that in the *Branti* analysis "duties prevail over titles"). Moreover, the SJC's analysis equated the definition of policymaking with the position's civil service status under Massachusetts law. But the state law classification of a position is not determinative in the *Branti* analysis. *See, e.g., Jimenez Fuentes*, 807 F.2d at 246.

did not have a property interest in continued employment. They also argue that, even if they were wrong in this respect, the *Parratt-Hudson* doctrine bars Hadfield's claim.

Hadfield's claim depends on him having a property right in continued employment. *See Bd. of Regents* v. *Roth*, 408 U.S. 564, 576-78 (1972). If he did, he could not be discharged without due process which, in the employment context, includes the right to a predeprivation hearing. *See Cleveland Bd. of Ed.* v. *Loudermill*, 470 U.S. 532, 538-42 (1985). Whether Hadfield possessed a property interest in his employment is a matter of Massachusetts law. *See id.* at 538

The due process defendants argue that Hadfield did not have a property interest in continued employment (and thus was not entitled to a hearing) because his employment was governed by Mass. Gen. Laws ch. 126, § 8A. This statute provides that any deputy superintendent appointed by the Sheriff for employment in the house of corrections serves at the pleasure of the Sheriff and is exempt from civil service protection. Hadfield counters that his employment was governed by Mass. Gen. Laws ch. 35, § 51 which provides covered employees with civil service protection. Under this statute, covered employees may not be terminated without receiving notice and a hearing from the appointing authority. In addition, they may appeal the appointing authority's decision to the county personnel board and, if still dissatisfied, to the state courts. As part of the appeal, an aggrieved employee may claim that he was denied the requisite process, including the complete denial of a hearing. *See Puorro* v. *Commonwealth*, 794 N.E.2d 624, 628 (Mass. App. Ct. 2003) (holding that deputy sheriff, who was terminated without a hearing, could, as part of an appeal under Mass. Gen. Laws ch. 35, § 51, claim that he was denied a hearing because he was misclassified as a non-covered employee). A prevailing employee may obtain reinstatement and recover backpay.

Because we conclude that Hadfield's claim is barred by the *Parratt-Hudson* doctrine, we do not decide Hadfield's

proper employment classification under Massachusetts law. We assume *arguendo* that Hadfield possessed a property interest in continued employment and the concomitant right to a hearing concerning his termination.

We have summarized the *Parratt-Hudson* doctrine as follows:

> When a deprivation of a property interest is occasioned by random and unauthorized conduct by state officials, the Supreme Court has repeatedly emphasized that the due process inquiry is limited to the issue of the adequacy of the postdeprivation remedies provided by the state.

O'Neill v. *Baker*, 210 F.3d 41, 40 (1st Cir. 2000) (quoting *Lowe* v. *Scott*, 959 F.2d 323, 340 (1st Cir. 1992) (alterations in *O'Neill* omitted). *Parratt-Hudson* shields a public entity from a federal due process claim where the denial of process was caused by the random and unauthorized conduct of government officials and where the state has provided adequate postdeprivation remedies to correct the officials' random and unauthorized acts. *See Mard* v. *Town of Amherst*, 350 F.3d 184, 193 (1st Cir. 2003); *Brown* v. *Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 536-37 (1st Cir. 1995). The doctrine thus permits "procedural claims to be resolved in state forums where states . . . provide adequate remedies." *O'Neill*, 210 F.3d at 50.

Our cases establish that a government official has committed a random and unauthorized act when he or she misapplies state law to deny an individual the process due under a correct application of state law. *See O'Neill*, 210 F.3d at 50; *Herwins* v. *City of Revere*, 163 F.3d 15, 19 (1st Cir. 1998); *Cronin* v. *Town of Amesbury*, 81 F.3d 257, 260 (1st Cir. 1996) (per curiam); *Brown*, 68 F.3d at 536-37; *Lowe*, 959 F.2d at 344. In other words, conduct is "random and unauthorized" within the meaning of *Parratt-Hudson* when the challenged state action is a flaw in the official's conduct

rather than a flaw in the state law itself.[6] *See Herwins*, 168 F.3d at 19 (stating that, but for *Parratt-Hudson*, "federal suits might be brought for countless local mistakes by officials in administering the endless array of state laws and local ordinances").

We have applied this doctrine in the public employment context. In *Cronin*, we rejected an employee's procedural due process claim because the claim was not directed at the sufficiency of the statutorily provided pretermination procedures, but rather at the conduct of the government officials charged with implementing the procedures. 81 F.3d at 260 & n.2. Similarly, in *O'Neill*, we rejected an employee's procedural due process claim based on the failure of a state actor to provide an employee with the statutorily required pretermination notice. 210 F.3d at 50. We explained that "state law clearly provid[ed] for adequate notice and there [was] no suggestion that either by formal or informal means the state ha[d] authorized the giving of inadequate notice to persons who may be terminated, or that this was any form of regular practice." *Id.*; *see also Learnard* v. *Inhabitants of Town of Van Buren*, 182 F. Supp. 2d 115, 1124-25 (D. Me. 2002) (applying *Parratt-Hudson* and First Circuit precedent to reject an employee's procedural due process claim based on the denial of a hearing because state law provided that the employee had a property interest in continued employment).

Here, Hadfield was denied a hearing because the due process defendants erred (if they erred at all) by misapplying Massachusetts civil service law. This determination was not

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[6] Hadfield cites to cases from other courts which have taken a narrower view of "random and unauthorized conduct," *see, e.g.*, *Honey* v. *Distelrath*, 195 F.3d 531, 533-34 (9th Cir. 1999), but acknowledges that we have adopted a broader view described above.

discretionary or governed by a formal or informal policy.[7] *Cf. Zinermon* v. *Burch*, 494 U.S. 113, 136-138 (1990) (holding that the *Parratt-Hudson* doctrine does not apply where the denial of predeprivation process resulted from the state-sanctioned discretion of the official to decide what process is necessary); *O'Neill*, 210 F.3d at 50 (stating that the doctrine may not apply when unlawful conduct is in accord with informal policy). Rather, if error, it was simply a misapprehension of state law. This is the sort of random and unauthorized conduct to which *Parratt-Hudson* applies. *See Herwins*, 163 F.3d at 19.

Having concluded that any deprivation of process was caused by random and unauthorized conduct by the due process defendants, we turn to whether Massachusetts law provided Hadfield with an adequate postdeprivation remedy. We have previously considered this issue under an almost identical Massachusetts statute. *See Cronin*, 81 F.3d at 260. In *Cronin*, we found that a Massachusetts civil service statute, which allowed a terminated employee to appeal the termination decision to the civil service commission and the state superior court (and, if successful, to obtain reinstatement and backpay) provided a sufficient postdeprivation remedy. *See id.* (discussing Mass. Gen. Laws ch. 31, § 44); *see also Herwins*, 163 F.3d at 19-20 (stating that administrative and judicial review is the "conventional regime" for remedying erroneous decisions by state officials and thus constitutes adequate postdeprivation process). The statute at issue in this case is materially indistinguishable, *see* Mass. Gen. Laws ch. 35, § 51, and therefore provided Hadfield with an adequate postdeprivation remedy for purposes of *Parratt-Hudson*. Hadfield chose not to pursue his postdeprivation remedy in state court, but there is no dispute that it was

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[7] Whether an employee is entitled to a hearing under Massachusetts law is a matter of statutory construction, not administrative discretion. *See Hogarth* v. *Sheriff of Suffolk County*, 564 N.E.2d 397, 398-99 (Mass. App. Ct. 1990).

available to him. *See Herwins*, 163 F.3d at 19 (stating that it "makes no sense" to permit a plaintiff to pursue a federal due process claim after ignoring the "state provided procedural remedy"). Accordingly, the district court correctly awarded the due process defendants summary judgment.

III.

For the reasons stated, the district court's judgment is ***affirmed.***

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 01-CV-10563-GAO

JOSEPH M. PALOMBO, KEVIN DALTON, GEORGE B. MADSET, JR., and RUSSELL J. HADFIELD,
Plaintiffs

v.

JOSEPH F. MCDONOUGH in his Individual Capacity and as Sheriff of Plymouth County; MATTHEW HANLEY in his Individual Capacity and as Special Sheriff of Plymouth County; CHARLES LINCOLN and COLEMAN MCDONOUGH, in their Individual and Official Capacities; and JOHN P. RIORDAN, ROBERT J. STONE and PETER ASIAF, JR. in their Official Capacity as County Commissioners of the County of Plymouth,
Defendants

ORDER
October 22, 2003

O'TOOLE, D.J.

On defendants' motions for summary judgment, the Court orders as follows:

1) Defendants' motions for summary judgment are GRANTED as to Plaintiff Russell Hadfield's claim under Count 1 (First Amendment violations) because (1) political loyalty is a legitimate job requirement for the position of Assistant Deputy Superintendent-Training, and (2) Hadfield's counsel conceded at the hearing on defendants' motions for summary judgment that Hadfield suffered no separate harm as a result of the termination of his commission to serve as a Deputy Sheriff.

2) Defendants Joseph McDonough's and Matthew Hanley's motions for summary judgment are DENIED as to plaintiffs Joseph Palombo's, Kevin Dalton's, and George Madsen's claims under Count 1 (First Amendment violations) because political loyalty is not a legitimate job requirement for the position of Deputy Sheriff, and sufficient factual disputes exist to warrant a trail on plaintiffs' claims.

3) Defendants Charles Lincoln's and Coleman McDonough's motion for summary judgment is GRANTED as to plaintiff's Palombo's, Dalton's, and Madsen's claims under Count 1 (First Amendment violations) because, although political loyalty is not a legitimate job requirement for the position of Deputy Sheriff, there is insufficient evidence to support an inference that defendants Charles Lincoln and Coleman McDonough took part in the decision to decommission plaintiffs Palombo, Dalton, or Madsen.

4) Defendants' motions for summary judgment are GRANTED as to all plaintiffs' claims under Count 2 (procedural due process violations). Assuming, without deciding, that plaintiffs were entitled to the protections of Mass. Gen. Law ch. 35, § 51 and had a constitutionally-protected property interest in continued employment, plaintiffs' due process claims fail under the *Parratt-Hudson* doctrine. *See, e.g., Lowe v. Scott*, 959 F.2d 323, 340 (1st Cir. 1992) (*Parratt* and *Hudson* teach that if a state provides adequate postdeprivation remedies – either by statute or through the common-law tort remedies available in its courts – no claim of a violation of procedural due process can be brought under § 1983 against the state officials whose random and unauthorized conduct occasioned the depreivation.").

5) Defendants' motions for summary judgment are DENIED to the extent that they rely on claims of Eleventh Amendment immunity. The Plymouth County Sheriff's Department is not an arm of the state.

6) Defendants' motions for summary judgment are DENIED to the extent that they rely on claims of qualified immunity.

7) As the Court reads plaintiffs' complaint and the motion papers, plaintiffs do not make any claims against defendants John Riordan, Robert Stone, Peter Asiaf, and John McLellan in their individual capacities. To the extent that plaintiffs assert such claims, they are without merit, and defendants Riordan's, Stone's, Asiaf's, and McLellan's motion for summary judgment is GRANTED as to any claims against them in their individual capacities. Defendants Riordan, Stone, Asiaf, and McLellan shall remain defendants in their official capacities only to the extent that they may be necessary parties to effect relief against the county, if any is warranted.

8) As previously scheduled, the Court will conduct a final pre-trial conference on October 28, 2003, and a trail will begin on November 10, 2003 on the claims of plaintiffs Palombo, Dalton and Madsen, and against defendants Joseph McDonough, Matthew Hanley, John Riordan, Robert Stone, Peter Asiaf, and John McLellan as to Count 1 (First Amendment violations).

It is SO ORDERED.

October 22, 2003
Date

George A. O'Toole, Jr.
DISTRICT JUDGE

(1)

No. 05-214

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

RUSSELL J. HADFIELD,

Petitioner,

v.

JOSEPH F. MCDONOUGH, in his individual and official capacity as Sheriff of Plymouth County, Massachusetts, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the United States Court of Appeals for the First Circuit correctly ruled that the *Parratt-Hudson* doctrine bars Petitioner's procedural due process claim where Petitioner does not allege any flaw in the state's statutory pre-termination of employment process requirements but does allege that the conduct causing the alleged deprivation was intentional and violated the established, non-discretionary state law which, if followed, would have provided adequate pre-deprivation process, and where the state has provided an adequate post-deprivation remedy.

PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties identified in the caption, defendants in the district court included Matthew Hanley, individually and as Special Sheriff of Plymouth County; Coleman McDonough and Charles B. Lincoln, individually and in their official capacities at the Plymouth County Sheriff's Department; John P. Riordan, Robert J. Stone, and Peter G. Asiaf, Jr., as County Commissioners of Plymouth County; and John F. McLellan, as Treasurer of Plymouth County.

All claims against defendants Charles B. Lincoln and Coleman McDonough were dismissed voluntarily in the district court, and the procedural due process claims against Special Sheriff Hanley also were dismissed voluntarily in the district court.

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RELEVANT CONSTITUTIONAL PROVISION AND STATUTES

U.S. Const. amend. XIV

42 U.S.C. § 1983

Massachusetts G.L. c. 35, § 51

Massachusetts G.L. c. 126, § 8A

STATEMENT OF THE CASE

Several months before the November 2000 election of respondent Joseph F. McDonough ("Sheriff McDonough") as Sheriff of Plymouth County, Massachusetts, petitioner Russell J. Hadfield ("Hadfield"), in May 2000, resigned voluntarily from his position at the Plymouth County Sheriff's Department ("PCSD" or the "department") as Captain-Field Services, in order to accept an appointment by then Sheriff Charles Decas ("Decas") as Assistant Deputy Superintendent-Training ("ADS-Training"). At the time, Hadfield expressly acknowledged in writing[1] his "agree[ment] and understand[ing]" that in the new position, he would not have any rights under Massachusetts G.L. c. 35, § 51[2] to, among other things, termination for "just cause," notice and a pre-termination hearing, because the ADS-Training position was subject, instead, to Massachusetts G.L. c.

[1] Letter, dated April 28, 2000, from the PCSD Director of Human Resources to, and on May 11, 2000, endorsed and returned by, Hadfield, Court of Appeals Jt. Appendix ("C.A. Jt. App.") p. 567; Affidavit of John Cristiani, ¶3, C.A. Jt. App. 563-64.

[2] Respondents' Appendix ("Resp. App.") 4.

126, § 8A,[3] which provides that persons subject to § 8A serve "at [the] pleasure" of the county sheriff.

In February 2001, soon after Sheriff McDonough had assumed office, the PCSD conducted a series of interviews of the senior staff of the department, including, among others, all PCSD Directors and Assistant Deputy Superintendents, which resulted in the retention of numerous PCSD officials and employees despite their support for Decas against Sheriff McDonough in the recent election campaign.[4] After Hadfield's interview by the PCSD Chief of Staff and the PCSD Director of Human Resources, Hadfield's employment was terminated on February 22, 2001,[5] because, as Sheriff McDonough testified, he "lacked confidence" in Hadfield due to his poor performance in what even Hadfield himself admitted had been a "bad interview."[6] [7] There is no evidence in the record that the respondent county commissioners participated in any way in Sheriff McDonough's termination of Hadfield as ADS-Training without a pre-termination hearing.

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[3] Resp. App. 7.

[4] Sheriff McDonough deposition ("dep."), April 28, 2003, p. 153, ll. 8-13, C.A. Jt. App. 276; *id.* at p. 158, ll. 14-18, C.A. Jt. App. 278; *id.* at p. 162, ll. 14-24, C.A. Jt. App. 279; *id.* at p. 163, ll. 23-24, p. 164, ll. 1-3, C.A. Jt. App. 279; *id.* at p. 167, ll. 1-13, C.A. Jt. App. 280; *id.* at p. 167, ll. 14-22; C.A. Jt. App. 280.

[5] Hadfield dep., April 7, 2003, p. 90, ll. 15-21, C.A. Jt. App. 312 p. 111, ll. 22-24, p. 112, ll. 1-2, p. 113, ll. 22-24, C.A. Jt. App. 314; p. 114, ll. 1-4, C.A. Jt. App. 315; Hadfield dep., April 9, 2003, p. 272, ll. 13-20; p. 273, ll. 20-23, C.A. Jt. App. 333; Sheriff McDonough's answ. to int. No. 2.3, C.A. Jt. App. 432-33.

[6] Sheriff McDonough dep., April 28, 2003, p. 178, ll. 22-24; C.A. Jt. App. 282; Sheriff McDonough's answ. to int. No. 2.3, C.A. Jt. App. 432-33.

[7] Hadfield dep., April 9, 2003, p. 293, ll. 12-14; C.A. Jt. App. 334.

By letter, dated February 28, 2001,[8] Hadfield requested a hearing before the commissioners. They rejected his request on the grounds that he was an at-will employee serving at the pleasure of the sheriff, whose status, as Hadfield had acknowledged on May 11, 2000, was governed by Massachusetts G.L. c. 126, § 8A, and under that statute, the commissioners lacked jurisdiction to conduct a hearing.[9]

The denial of a post-termination hearing by the commissioners triggered any right Hadfield may have had to proceed in state court to seek "reinstatement" to his position "without loss of compensation," if, as he claims, he was entitled to the protection of Massachusetts G.L. c. 35, § 51. *See Puorro* v. *Commonwealth*, 59 Mass. App. Ct. 61, 794 N.E.2d 624 (2003). He did not do so.

Instead, even though Sheriff McDonough had retained numerous PCSD officials and employees who had supported Decas in the election campaign,[10] Hadfield and three former civil process deputy sheriffs, brought suit in the district court under 42 U.S.C. § 1983 claiming that their First Amendment rights had been violated when the plaintiff civil process deputies had been decommissioned by Sheriff McDonough and when Hadfield's employment as ADS-Training had been terminated, allegedly because of their election campaign support for Decas. They also alleged violations of their Fourteenth Amendment procedural due process rights when they were decommissioned or terminated, as the case may be, without a pre-termination hearing to which they alleged they were entitled under Massachusetts G.L. c. 35, § 51.

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[8] C.A. Jt. App. 217.

[9] Letter, March 20, 2001, to Hadfield, C.A. Jt. App. 218.

[10] *See* note 4, *supra*.

Hadfield did not allege, and there is no evidence in the record, that there had been an established formal or informal state, county or PCSD procedure, policy or custom of denying a pre-termination hearing to a PCSD employee entitled to the protection of Massachusetts G.L. c. 35, § 51. Nor did Hadfield allege that the pre-termination requirements of G.L. c. 35, § 51 were constitutionally deficient.

The district court allowed respondents' motions for summary judgment on Hadfield's First Amendment claims[11] and, on the procedural due process claims, the district court ruled:

> Assuming, without deciding, that plaintiffs were entitled to the protections of [Massachusetts G.L. c. 35, § 51] and had a constitutionally-protected property interest in continued employment, plaintiffs' due process claims fail under the *Parratt Hudson* doctrine. *See Lowe* v. *Scott*, 959 F.2d 323, 340 (1st Cir. 1992).[12]

Hadfield appealed the district court's rulings on both his First and Fourteenth Amendment claims to the United

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[11] The district court held that "political loyalty is a legitimate job requirement for the position of [ADS]-Training," C.A. Jt. App. 1259-60, but denied the motion as to the other plaintiffs' First Amendment claims "[b]ecause political loyalty is not a legitimate job requirement for the position of Deputy Sheriff and sufficient factual disputes exist to warrant a trial on plaintiffs' claims." *Id.* Those claims were tried to a jury in the district court, which, on January 28, 2004, returned verdicts against them. C.A. Jt. App. 39.

[12] C.A. Jt. App. 1260. The district court explained that "*Parratt* and *Hudson* teach that if a state provides adequate postdeprivation remedies – either by statute or through the common-law tort remedies available in its courts – no claim of a violation of procedural due process can be brought under § 1983 against the state officials whose random and unauthorized conduct occasioned the deprivation." *Id.*